No. 86-241

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1986

Ann P. Fields and Gerald Fields, Individually; and Life For God's Stray Animals, Inc.,

Petitioners,

v.

Rockdale County, Georgia; et al.,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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STATEMENT OF CASE

A. Facts and Proceedings Below

Respondents accept the statement of facts in the petition for certiorari, subject to one clarification and to facts which have arisen after the rendition of the Eleventh Circuit's opinion in this case.

The clarification that Respondents would offer relates to the extended legal proceedings in state court that preceded the institution of this lawsuit in federal district court. Since 1980, the Petitioners have operated a "no-kill" animal shelter on Farmer Road in Rockdale County, Georgia. The legality of that operation has been the subject of much litigation. At issue has been Petitioners' compliance with local zoning ordinances and with the nuisance law of Georgia. It is not an exaggeration to say that the Petitioners have lost on all major issues in the state courts. The most crucial finding throughout these lengthy proceedings was that the Farmer Road shelter is a nuisance. As a result, it has become necessary for Petitioners to vacate

that location. They purchased an alternative 220 acre site on Miller Bottom Road (also in Rockdale County) for their new animal shelter. Despite these adverse state court rulings, the Farmer Road shelter remains in operation; the Miller Bottom Road shelter is a going concern now as well.

Here Respondents would point out a fundamental fact: there is a continuing question of state law over whether the Petitioners' attempt to move their shelter to Miller Bottom Road is in compliance with the Rockdale County Superior Court nuisance decree. This decree was affirmed by the Georgia Supreme Court in Life for God's Stray Animals, Inc. v. North Rockdale County Homeowners Assoc., Inc., 253 Ga. 551, 322 S.E.2d 239 (1984). The Petitioners' challenge to the Rockdale County kennel ordinance was and is an attempt to evade the effects of this decree. The kennel ordinance is at this point wholly peripheral to that controversy and may never be invoked to bar the Petitioners' attempt to move to the Miller Bottom Road location.

Since the Eleventh Circuit's decision in the present case, the Petitioners have been held in civil contempt for their failure to comply with the nuisance decree. However, they fled the state to avoid sanctions and their present whereabouts are unknown. Very recently, the Supreme Court of Georgia considered their appeal from the contempt order and dismissed it because of their evasion of the jurisdiction of the Rockdale County Superior Court in a matter properly before it. Life for God's Stray Animals, Inc. v. New North Rockdale County Homeowners Assoc., Inc., ___ Ga. ___, ___ S.E.2d ___ (Case Nos. 43638 & 43715; October 23, 1986).

SUMMARY OF ARGUMENT

Respondents believe that the Eleventh Circuit's decision below does not merit consideration by this Court. Specifically, the decision to vacate the district court's order declaring the kennel ordinance unconstitutional and to remand for presentation of the question to state court is consistent with Pullman

abstention principles. In any event, should the constitutional merits be reached in this case, the kennel ordinance is constitutionally valid. Respondents believe that it withstands scrutiny under the rational basis test.

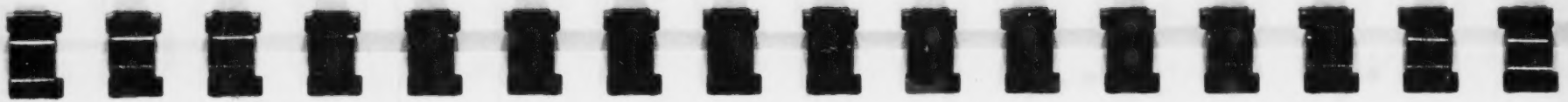
ARGUMENT

I. Pullman Abstention Issue Correctly Decided

It would be difficult to discuss this issue without mentioning that the Petitioners' resort to federal court in this case is at least puzzling, if not somewhat disingenuous. Petitioners challenged the constitutionality of the kennel ordinance on Fourteenth Amendment due process and equal protection grounds. Nowhere in their federal complaint do they mention a pendent state claim based on the Georgia Constitution. At first glance, this might seem totally unexceptional. Petitioners' position, however, begins to become unusual when note is taken of the case authority they rely upon. Instead of citing and discussing this Court's many zoning and economic regulation

cases applying the rational basis test, they relied entirely on three Georgia cases, Avant v. Douglas County, 253 Ga. 225, 319 S.E.2d 442 (1984); Shoemake v. Woodland Equities, 252 Ga. 389, 313 S.E.2d 689 (1984); Barrett v. Hamby, 235 Ga. 262, 219 S.E.2d 399 (1975). What makes these three cases especially noteworthy is the clear suggestion that the kennel ordinance violates Article I, section 1, paragraph 1 of the Georgia Constitution -- the Georgia due process clause.

Essentially, the Petitioners tried to make the federal district court a surrogate state court to rule on the validity of the kennel ordinance on state constitutional grounds. What else can explain the authority which they cited? Having relied upon it, however, the Petitioners found themselves trapped. They wanted the Eleventh Circuit to follow the Georgia cases in deciding the merits of the constitutional question -- despite the fact that the Georgia due process standard in this instance is



stricter than the federal[1] -- and yet ignore those same cases in considering Pullman abstention.

Basically, the Eleventh Circuit ruled that since state constitutional law was arguably so much in Petitioners' favor, they ought to take their contention back to state court to press it. Federal judicial intervention, the court suggested, would seem pointless if state law provides for the relief that Petitioners sought. This is the general policy behind Pullman abstention. Adding support to the Eleventh Circuit's reasoning are two factors: (1) the kennel ordinance has never been interpreted judicially and there are several uncertainties about its application to the animal shelters operated by the Petitioners; and (2) land use questions tend to involve matters of intensely local concern and hence

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[1]The Eleventh Circuit correctly noted this fact. Fields v. Rockdale County, 785 F.2d 1558, 1561, n. 4 (11th Cir. 1986). To have accepted Petitioners' invitation would have run afoul of this Court's decision in Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456 (1981).

there is a real potential for unnecessary friction between federal and state courts.

II. Kennel Ordinance Valid Under Rational Basis Test

Should this Court decide that Pullman abstention was unwarranted, the Petitioners cannot prevail on the merits in any event. The challenge to the kennel ordinance must be assessed under the rational basis test which is essentially the same under federal due process or equal protection analysis. This means that the kennel ordinance enjoys a strong presumption of constitutional validity and that the burden is on the challenger to displace this presumption. The kennel ordinance must be upheld as long as it serves some legitimate purpose. To prove otherwise, the Petitioners in this case had to demonstrate the lack of any conceivable relationship between the kennel ordinance as enacted and the purposes it might be said to promote. Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 464 (1981).

It is difficult to understand how the Petitioners could believe that the record in this case satisfies federal due process or equal protection requirements for invalidating the kennel ordinance. Petitioners have never disputed the difference between "kill" and "no-kill" animal shelters. The Humane Society is an example of the former. After animals are kept for a specified period, they are put to death. The animal population at such a shelter is kept under control in this way. A "no-kill" animal shelter such as those run by Petitioners takes stray animals that people would be unlikely to want as pets and attempts to sustain them for the rest of their natural lives. The animal population at such shelters tends to be quite large. Respondents believe that the presence of a "no-kill" animal shelter in a county with a rapidly increasing population necessitated a general ordiance dealing with the animal population in all kennels. The specific aim of the ordinance was to minimize the noise, odor and sanitation problems associ-

ated with kennels. Surely that is a legitimate, if not a substantial, regulatory purpose.

Did Rockdale County have any conceivable factual basis for believing that the population limits would advance this purpose? All kennels were limited to 150 dogs and 50 cats. To the extent that noise, odor and sanitation problems are a function of kennel size, Rockdale County plausibly could have found that smaller is better. Admittedly, that is not an especially inspiring defense of the ordinance, but it is accurate and well above the minimum set under the rational basis standard. Perhaps encouraged by the contrary-to-fact hypothetical in the trial judge's opinion,[2] Petitioners suggested

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[2]The trial judge apparently believed the ordinance lead to absurd results. To prove his point, he gave this example using the tract at Miller Bottom Road: "[U]nder the ordinance, plaintiffs could keep only 150 dogs and 50 cats on their new, 220-acre property. The same area, if subdivided and owned separately, could, consistent with the ordinance, contain over 8,000 dogs and 2,400 cats even allowing for the effect of set-back requirements." Significantly, the trial judge stopped short of saying that the purpose of the ordinance was to achieve that result. In effect, his reluctance to take that final step made the hypothetical irrelevant under rational basis analysis.

below that the kennel ordinance would limit the size of their operations, but would allow separately owned kennels to operate side-by-side from one end of the county to the other -- making a mockery of the population limits. This alleged loophole to the ordinance is truly an academic contrivance. It assumes that a perhaps imperfectly drawn law will be construed in a manner that defies common sense. The argument reveals more about the weaknesses of Petitioners' case than it does the flaws in the Rockdale County kennel ordinance. The presumption of constitutionality that attaches to economic and social legislation -- of which the kennel ordinance is an example -- gives the benefit of the doubt to the statutory drafters and to those responsible for enforcing and interpreting the law.

CONCLUSION

The Eleventh Circuit correctly ruled on the Pullman abstention ground. Respondents at oral argument actually preferred to get a ruling on the due process and equal protection issues to bring the Petitioners' federal court diversionary maneuver to an end. Either way, Respondents believe that the law favors their position. In the last analysis, even if the Eleventh Circuit erred, the issues in this case have significance in the main only for the citizenry of Rockdale County, Georgia. The criteria for certiorari are not met.

Respectfully submitted,

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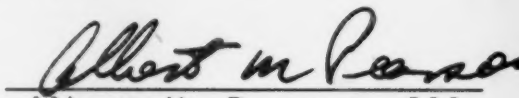
CERTIFICATE OF SERVICE

As a member of the Bar of the United States Supreme Court, I certify that on the 13th day of November, 1986, a copy of the preceding BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI was mailed first-class, postage prepaid to:

Kathleen Kessler
Carr & Kessler
3384 Peachtree Road
Suite 250
Atlanta, GA 30326

I further certify that all parties required to be served have been served.



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